IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1806 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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JHON OLIVER JOSHEF & 3 - Applicant(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR HR PRAJAPATI for Applicant(s) : 1 - 4.
MR KT DAVE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
None for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 25/09/2007

ORAL JUDGMENT

1. By way of this application under Section 482 of the Criminal Procedure Code, the petitioners – original accused have prayed for an appropriate order to quash and set aside the FIR

being C.R.No. I – 208/2007 registered with Kagadapith Police Station.

2. A criminal complaint being FIR C.R.No.208/2007 has been filed by respondent No.3 – herein – original complainant Principal of Behrampura School No.9, run by Ahmedabad Nagrik Pratmik Shishan Samiti (Ahmedabad Municipal Corporation) against the petitioners for the offence punishable under Sections 447, 448 and 114 of the Indian Penal Code with the Kagadapith Police Station alleging inter-alia that all the petitioners- original accused have illegally trespassed property in question with a view to show their possession before filing of the Suit and appointment of Court Commissioner and Panchnama and; that they were trying to put their house-hold, furniture etc. and taking photographers to show possession. Being aggrieved and dissatisfied with the said complaint, the applicants – original accused have preferred the present application under Section 482 of the Cr.P.C.

3. Mr.H.R.Prajapati, learned Advocate appearing on behalf of the applicants – original accused has submitted that as such the applicants- original accused are owners of the property in question which was leased to the Municipal School Board in the year 1954 for a period of one year only and; thereafter lease period has not been extended and they were infact in possession of the property in question and therefore, it cannot be said that the petitioners have committed any offences as alleged in the complaint. Under the

circumstances, it is requested to quash the impugned complaint / FIR by submitting that no case is made out against the petitioners under Sections 447, 448 and 114 of the Indian Penal Code and to continue the criminal proceedings against the petitioners would be abuse of process of Court. He has relied upon the Court Commissioner's report in Regular Civil Suit No. 4445/2000 pending the Court of learned City Civil Judge, Ahmedabad in support of his submission that they were in possession of the property in question. Therefore, it is requested to quash and set aside the impugned complaint/ FIR.

4. The application is opposed by Mr.K.T.Dave, learned APP and has submitted that the petitioners – original accused might be the owners of the property in question, however, the said property was leased to the Municipal School Board for the purpose of running primary school and; that Civil Suits are also pending and in between they have entered into premises in question illegally with a view to show possession in their favour by filing suit for getting possession of the property in question. It is submitted that alleged incident has taken place on 17.07.2007 and accused persons entered into premises, put their house-hold articles and got photographs and one Civil Suit came to be filed on 16.07.2007 and the Court Commissioner was appointed on 17.07.2007. This shows the criminal intention on the part of the petitioners – original accused. It is submitted that on bare reading of the complaint, prima-facie cognizable offences are made out which requires

further investigation and evidence are to be collected. Therefore, it is requested not to exercise powers under Section 482 of the Cr.P.C. and not to quash the FIR at this stage.

5. Heard the learned Advocates appearing on behalf of the respective parties.

6. It is the contention on behalf of the applicants- original accused that they were owners of the property in question which was leased to the Municipal School Board for running primary school in the year 1954 for a period of one year and the validity was upto 1955 and thereafter lease has not been extended and therefore, they had right to get the possession and enter into premises. It is required to be noted that one Civil Suit being Regular Civil Suit No.4445/2000 has been filed by the applicants -original accused for getting possession of the property in question and the said Suit is pending. In the said suit Court Commissioner is appointed and the petitioners have relied upon the report of the Court Commissioner to show that they were in possession of the property in question. However, on bare reading of the report of the Court Commissioner it cannot be said that there is finding that the applicants were found to be in possession of the property in question. Even the learned Advocate appearing on behalf of the applicants is not in a position to substantiate his claim with regard to possession on the basis of the Court Commissioner's report of 2000. It is required to be noted at this stage that one another Suit

has been filed by the concerned applicants on 16.07.2007 against the Municipal School Board, Ahmedabad Municipal Corporation etc. with regard to premises in question and it is alleged that on 17.07.2007 petitioners entered into premises in question illegally and put their house-hold articles to show their possession for the purpose of getting their possession and the Court Commissioner was appointed on 17.07.2007 and it was also found that the applicants were getting photographers to show their possession. All these shows criminal intention on the part of the applicants – original accused and that they are owners of the property in question. When civil suits are pending, this is not the way in which the applicants can take law in their hands and get possession. This petition is filed under Section 482 of the Cr.P.C. Looking to the aforesaid criminal intention and conduct on the part of the applicants, the applicants are into entitled to any reliefs in an application under Section 482 of the Cr.P.C. As held by the Hon'ble Supreme in the case of ***State of Orissa and Anr. V/s. Saroj Kumar Sahoo*** reported in *(2005) 13 SCC 540* – inherent powers under Section 482 is to be exercised sparingly and that too in the rarest of the rare cases. In para 11 of the said judgment, the Hon'ble Supreme Court has observed as under :

> *"11. As noted above, the powers possessed by the High Court under Section 482 of the Cr.P.C. are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised*

to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. (See: Janata Dal v. H. S. Chowdhary, [1992] 4 SCC 305, and Raghubir Saran (Dr.) v. State of Bihar, AIR (1964) SC 1). It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. (See: Dhanalakshmi v. R. Prasanna Kumar, [1990] Supp SCC 686, State of Bihar v. P. P. Sharma, AIR (1996) SC 309, Rupan Deol Bajaj v. Kanwar Pal Singh Gill, [1995] 6 SCC 194, State of Kerala v. O.C. Kuttan, AIR (1999) SC 1044, State of U.P. v. O.P.Sharma, [1996] 7 SCC 705, Rashmi Kumar v. Mahesh Kumar Bhada, [1997] 2 SCC 397, Satvinder Kaur v. State (Govt. of NCT of Delhi, AIR (1996) SC 2983 and Rajesh Bajaj v. State NCT of Delhi, [1999] 3 SCC 259).”

Similar view is expressed by the Hon'ble Supreme Court in the case of **State of Bihar and Anr. V/s. P.P.Sharma and ors.** reported in AIR 1991 SC 1260.

7. Now considering aforesaid two decisions of the Hon'ble Supreme Court and considering the facts of the case on hand and

averments and allegations in the complaint, this is not a fit case to exercise powers under Section 482 of the Cr.P.C. and to stall the investigation at threshold and quash the complaint. On bare reading of the averments and allegations in the complaint, criminal intention on the conduct on the part of the original accused stated herein above, it requires further investigation and prima-facie case is made out for further investigation. Under the circumstances, present petition requires dismissal and is accordingly dismissed.

[M.R.Shah, J.]

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